

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
IDA PAVLICHENKO,)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-10429-RGS
)	
THOMAS RIDGE, as Secretary of)	
the Department of Homeland)	
Security, EDUARDO AQUIRRE,)	
Acting Director of the Bureau)	
of Citizenship & Immigration)	
Services, and DENIS C.)	
RIORDAN, District Director)	
of the Bureau of Citizenship)	
& Immigration Services for)	
Boston, Massachusetts,)	
Defendants.)	
_____)	

**DEFENDANTS' MOTION TO DISMISS AND REMAND TO THE UNITED STATES
CITIZENSHIP AND IMMIGRATION SERVICE FOR FURTHER PROCEEDINGS**

As more fully demonstrated in the accompanying Memorandum in Support, the defendants, by their attorney, Michael J. Sullivan, U.S. Attorney for the District of Massachusetts, respectfully move this Court to dismiss the above-captioned matter pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and remand the matter to the United States Citizenship and Immigration Service ("USCIS") for further proceedings as this Court lacks subject matter jurisdiction where the statutory 120 day period provided by 8 U.S.C. § 1447(b) has not yet expired.

Respectfully submitted,

UNITED STATES OF AMERICA
By its attorney,

MICHAEL J. SULLIVAN
United States Attorney

Dated: September 6, 2005

/S/ Christopher R. Donato
Christopher R. Donato
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CERTIFICATE OF SERVICE

I certify that on this day a true copy of the above document was served by first class mail, postage prepaid, upon the following:

Desmond P. FitzGerald, Esq.
FitzGerald & Company, LLC
18 Tremont Street, Suite 210
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Dated: September 6, 2005

/S/ Christopher R. Donato
Christopher R. Donato
Assistant U.S. Attorney